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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,774	03/22/2004	Denise Loporcaro	5530	7790
7590	04/27/2005			
Charles I. Brodsky, Esq. 2 Bucks Lane Marlboro, NJ 07746			EXAMINER FLORES SANCHEZ, OMAR	
			ART UNIT 3724	PAPER NUMBER

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/804,774	LOPORCARO, DENISE	
	Examiner Omar Flores-Sánchez	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 February 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

1. This action is in response to applicant's amendment received on 02/09/05.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 6-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petroff (4825544) in view of Adachi (6651345).

Petroff discloses (Fig. 1-20) the invention substantially as claimed including:

- Regarding claim 1; a pair of scissors 1, a releasably openable closed case housing (39 and 40), a metal composition (see col. 1, lines 42-44, where patent no. 4,279,076 discloses the metal composition of the scissors used in the Petroff's device), and Petroff's prior art is capable of cutting food prepared for a child and opening the carry case for removal of the scissors at an eating establishment;
- Regarding claims 6 and 7; the carry case is closed at one end (see Fig. 20, the closed bottom of the cover 40) and a flip-open cover 40 (see Fig. 20, the open top of the cover);

- Regarding claims 8 and 9; a pair of first/curved wall surfaces (see Fig. 13, the bottom wall of part 39), a pair of second/straight wall surfaces (see Fig. 13, the side walls of cover 40);
- Regarding claim 10; an end extension 32 (see Fig. 5); and
- Regarding claim 13 and a hinge (see, Fig.3).

Regarding claims 1 and 2, Petroff does not show teeth serrations. However, Adachi teaches the use of teeth serrations (Fig. 1-33) for the purpose of increasing the cutting performance by having a non-slip state. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Petroff's scissors by providing the teeth serrations as taught by Adachi in order to increase the cutting performance by having a non-slip state.

4. Claims 3-5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petroff (4825544) in view of Adachi (6651345) as applied to claim 1 above, and further in view of Park (5857268).

The modified device of Petroff discloses the invention substantially as claimed except for a length not in excess of six inches and a width not in excess of four inches. However, Park teaches the use of a pocket tool with a length not in excess of six inches and a width not in excess of four inches for the purpose of easy carrying the tool in the pocket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Petroff's housing by providing the length not in excess of six inches and the width not in excess of four inches as taught by Park in order to carry the tool in the pocket.

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5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petroff (4825544) in view of Adachi (6651345) as applied to claims 1, 6-9 and 10 above, and further in view of Linden (4714159).

The modified device of Petroff discloses the invention substantially as claimed except for a plastic composition. However, Linden teaches the use of a plastic composition (see col.2, line 28) for the purpose of reducing manufacturing cost. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Petroff's housing by providing the plastic composition as taught by Linden in order to reduce manufacturing cost.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petroff (4825544) in view of Adachi (6651345) as applied to claims 1, 6-9 and 10 above, and further in view of Levsen (6082559).

The modified device of Petroff discloses the invention substantially as claimed except for a stainless steel composition. However, Levsen teaches the use of a stainless steel composition (see col. 3, line 22) for the purpose of having a stiff case. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Petroff's housing by providing the stainless steel composition as taught by Levsen in order to obtain a stiff cover.

#### *Response to Arguments*

7. Applicant's arguments have been fully considered but they are not persuasive. In response to applicant's argument that Petroff's prior art is not for cutting food prepared for child

at an eating establishment, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Flores-Sánchez whose telephone number is 571-272-4507. The examiner can normally be reached on 8:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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April 20, 2005

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